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HEALTH AND SAFETY COMMISSION

Consultation on Proposals for the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 200[x]

A Paper by Eddie Bailey, Head of Transport of Dangerous Goods Policy section

Advisors: Judith Critchley, Geoff Lloyd and Helen Shorey

Cleared by Vic Coleman, Head, TSPD on 10 April 2003

Issue

1. Approval to issue a Consultative Document (CD) on the proposed Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 200[x] (subsequently referred to here as the 'proposed Regulations').

Timing

2. Routine. Delay to the introduction of the proposed Regulations needs to be minimised, as implementation of the main European Directives is already overdue.

Recommendation

3. The Commission is invited to approve the issue of the attached CD (at Annex A) on the proposed Regulations for formal public consultation over a three-month period.

Background

4. Although the Department for Transport (DfT) have the policy lead on the international land transport of dangerous goods, it is current practice for HSC/E to be asked to prepare Regulations under HSWA covering the transport of dangerous goods by road and rail in GB (except radioactive materials by road where DfT retain responsibility). In the mid-1990s, the EU adopted two European Directives¹ (known as the RID and ADR framework Directives) which in broad terms prohibit the carriage of dangerous goods by road and rail in line with the provisions of two

¹ Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail; and Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Members States with regard to the transport of dangerous goods by road

international agreements, known as RID and ADR² which form annexes to the Directives. These agreements, and hence the annexes to the Directives, are generally amended every two years requiring Member States to amend their own implementing regulations to bring the changes into their regulations.

5. The Directives to be implemented by these proposals include:

- Commission Directive 2001/6/EC of 29 January 2001, adapting for the third time to technical progress Council Directive 96/49/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail (*partially implemented by the Packaging, Labelling and Carriage of Radioactive Material by Rail Regulations 2002 (RamRail), which came into force on 2 September 2002. The remainder was required to be implemented by end December 2002*).
- Commission Directive 2001/7/EC of 29 January 2001 adapting for the third time to technical progress Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road (*partially implemented by the Radioactive Material (Road Transport) Regulations 2002, prepared by DfT, which came into force on 7 June 2002. The remainder was required to be implemented by end December 2002*).
- Commission Directive 2003/29/EC of 7 April 2003, adapting for the fourth time to technical progress Council Directive 96/49/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail (*required to be implemented by 1 July 2003*)
- Commission Directive 2003/28/EC of 7 April 2003 adapting for the fourth time to technical progress Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road (*required to be implemented by 1 July 2003*)
- Council Directive 1999/36/EC of 29 April 1999 transportable pressure equipment (TPED) (*partially implemented by the Transportable Pressure Vessel Regulations 2001, the remainder to be implemented by 1 July 2003*).

6. The current domestic legislative framework (a extensive suite of Regulations and supporting Approved Documents) implemented the 1995 text of RID/ADR and has since been amended to reflect 1997 and 1999 texts. However, this framework has become increasingly unwieldy for duty-holders to understand and comply with, and for HSE/DfT to administer and enforce. It also simply replicates many of the detailed requirements in RID/ADR. The method used in the proposed Regulations of directly referencing RID/ADR has been developed in informal consultation with our stakeholders and has gained support in principle.

7. The restructuring and alignment of the 2001 texts of RID and ADR provided an opportunity to replace the current framework with a single set of regulations setting out the basic duties but cross-referring to RID/ADR for the detail of those duties. The attached proposals have been developed on this basis. As agreed by Ministers, the proposals will implement both the 2001 and 2003 texts of RID/ADR

² **R**eglements Internationales Relatif au Transport des Marchandises **D**angereuses par Chemin de Fer; and **A**ccord Européen Relatif au Transport International des Marchandises **D**angereuses par **R**oute

and the outstanding provisions of the Transportable Pressure Equipment Directive (TPED). This latter Directive sets out the basis for free movement in the EU of cylinders and tanks used for the transport of gases i.e. assessment and re-assessment of conformity to standards and arrangements for periodic inspection. As stated in paragraph 5, this has only had to be implemented so far in relation to certain transportable pressure equipment but implementation is required with regard to the remaining equipment by 1st July 2003. More background information is contained in the CD.

8. Preparing these proposals has not been easy. The direct referencing of international agreements within domestic regulations is unusual and has presented the challenge of having to frame our regulations to be consistent with the definitions and other terminology used in the agreements. We have had to ensure that we are clear about the scope and application of the draft Regulations, defining terms clearly, placing duties correctly on duty holders and conferring functions accurately on the GB competent authority, split between DfT, HSE and MoD (legally we must confer all the functions in RID/ADR on a competent authority if these functions do not already exist under other domestic legislation that we are not replacing). We have had to complete the implementation of TPED, clarifying the relationship of requirements in that Directive with those in RID/ADR. And we have had to provide for the exemptions and derogations allowed by the Directives.

9. As a result, HSE has not been able to implement the 2001 Directives on time and will not implement the 2003 Directives on time (as detailed in paragraph 5). Consequentially there is a risk of infraction proceedings being initiated by the European Commission. This risk has prompted an exchange of correspondence between Ministers and the HSC Chair about the implications of late implementation (copied to Commissioners). However, HSE maintains that the resources committed to carriage of dangerous goods matters are commensurate with the health and safety risks in the industry.

Argument

10. In broad terms, Parts II and III of the draft Regulations implement RID/ADR, part IV and Schedules 4 to 8 bring forward provisions on transportable pressure receptacles, extending these to all transportable pressure equipment covered by TPED. Schedules 1 and 2 bring forward provisions relating to existing tanks and pressure receptacles not covered by Parts II and III. Parts V and VI provide for alternative requirements to RID/ADR carried forward from existing legislation to maintain health and safety standards. This latter Part includes a power for HSE to authorise exemptions that are not subject to the same conditions as a certificate of exemption would normally be subject. These authorisations are specifically permitted under the Framework Directives but with boundaries set around their use.

11. The proposed new regulatory framework has a number of clear advantages over the current regime. All the requirements relating to the carriage of dangerous goods by road and rail (apart from those relating to radioactive material by road) will be in one place. Duty-holders who transport both domestically and internationally will generally be able to follow a single set of requirements based on those in RID/ADR. The two-yearly updates of RID/ADR should be more easily implemented

by amendment to domestic legislation in view of the cross-referencing approach, requiring less legal and administrative resources.

12. The proposals stem largely from European Directives. As a result, the provisions may only be substantively changed to the extent that those Directives allow the Member States' discretion as to the manner of implementation. Consultees will be asked for their views on, among other things:

- the approach taken in the Regulations to cross-refer to RID/ADR and whether the right duties are placed on the right people;
- the extent to which the changes in compliance requirements brought about by directly referencing RID/ADR affects their operations;
- specific issues connected with emergency placarding; and with new reporting requirements;
- issues arising from the completion of the implementation of the Transportable Pressure Equipment Directive; and proposals on the inspection and standards regime for tanks and transportable pressure receptacles; and
- proposals on guidance and the comprehensiveness of the RIA.

13. Updates in RID/ADR are negotiated over a number of years before RID/ADR and then the Framework Directives are amended accordingly and those changes in turn implemented through domestic legislation. Both DfT and HSE have established networks for consulting industry on forthcoming changes. HSE therefore considers that a three-month consultation period is adequate for an informed community involved in the transport of dangerous goods.

Consultation

14. Internally with HSE Solicitors, economists and colleagues in policy, enforcement, technical services and publishing; with OGDs – DfT, MoD and Dti; and with certain industry groups.

Presentation

15. The CD will be targeted at the wide number of stakeholders we consider will have an interest and made available for the general public via HSE's website and as hard copy via HSE Books. A list of consultees is at Annex B. A press notice will be issued. Because of the cross-referencing to RID/ADR, consultees will need to access the 2003 texts of ADR and RID to interpret the detailed requirements in the Regulations. The ADR text can be downloaded free from the United Nations Economic Commission for Europe's website and RID accessible via HSE Direct (publication is due during April). Texts will also be available in HSE Information Centres.

Costs and Benefits

16. A draft RIA is appended to the CD. On the balance of costs and benefits, the total costs to industry are estimated at £360 million over ten years in present value terms. Of this figure, approximately £200 million relates to the ongoing operating costs associated with the capacity loss in using ADR compliant tanks for carriage. Our economists believe that this cost can reasonably be set against the £2.8 billion operational benefit to industry from the recent increase in the axle weight limit from

38 tonnes to 44 tonnes brought into effect under general GB road traffic legislation. More information from consultees on the likely cost/benefit impact will be sought.

Financial/Resource Implications for HSE

17. Once the suite of existing Regulations has been consolidated, the biennial amendments should demand less HSE resource for both policy and legal sections. It is not anticipated that there will be any significant increase in enforcement costs to HSE as a result of these proposals. Looking to the future, officials in DfT and HSE are currently in high-level discussions to review the policy responsibility for regulation making on the transport of dangerous goods, with a view to streamlining the arrangements.

Environmental Implications

18. After adapting to the new layout of the proposed Regulations, HSE anticipates that duty-holders will find the regulations easier to understand, leading to increased levels of compliance. We expect the proposals will have a positive environmental impact.

Other Implications

19. The delay to the introduction of the proposed Regulations has made it necessary to consult on separate proposed amending Regulations to ensure that certain regulatory provisions relating to tanks and pressure vessels continue to apply to such equipment made after 1st July 2002 (see HSC/03/53, which has also been submitted below-the-line to this HSC meeting).

20. Existing Agency Agreements and Memoranda of Understanding with DfT, the Vehicle Inspectorate and the Police will need to be revised to reflect changes in the regulations.

Action

21. The Commission is invited to approve the recommendation in paragraph 3. HSE will then proceed with the consultation as soon as is practicable and return with concrete proposals later in the year.